**THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

**W.P.NO. 6298 OF 2001**

**Dated: 5th August, 2005.**

**Between:**

N.Satya Srikanth s/o Venkata Subbarao,

Aged about 25 years, studying 3rd year

MCA, NagarjunaUniversity, Guntur. …Petitioner

A N D

1. The Registrar, Nagarjuna University,

Guntur and another …Respondents

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**W.P.No. 6298 OF 2001**

**ORDER:**

1. This writ petition has been filed by N.Satya Srikanth, a student pursuing three years M.C.A.course in PNC & KR College Narasaraopet, Guntur District-2nd

respondent assailing the proceeding issued by the Registrar Nagarjuna University, Guntur District-1st respondent where under he has been disqualified to appear for University examination for a period of three years with effect from March-April, 2000.

2. The petitioner joined M.C.A. course in PNC & KR College, Narasaraopet in the year 1998. He appeared for 1st year M.C.A. Course examination held in March, 1999 and secured more than 70%. He appeared for 2nd year M.C.A.Course examination held in March, 2000. Two papers written by him viz. Operating System and Artificial Intelligence were not valued by the examiner on the ground that the examinee (petitioner) inserted certain pre-written additional sheets. A memo was issued to the petitioner on 30-9-2000 where under he was called upon to explain as to why action cannot be taken against him as he is found to be involved in malpractice (attaching pre-written additional sheets) in the examination. The petitioner submitted explanation on 4-10-2000. He asserted in the explanation that all the additional sheets were written in the examination hall and difference in writing appearing in the additional sheets in question was due to change of pen, which he informed to the invigilator. I deem it appropriate to refer explanation offered by the petitioner to the show cause notice and it is thus:

> "*I, Satya Srikanth, N. Regd. No. 99mc 25018, am studying M.C.A. final in PNC & KR. College, Narasaraopet. The matter in the letter is I attached prewritten additional sheets with different ink. But, I do not writ any pre-additional papers in the paper 207 ( code MCA 207 NR/d). The whole papers are written by me within the exam hall. When I am writing the Exam then only I told my invigilator that I am changing the pen. So the ink is different. But all the answer papers are written by me within the class room."*

3. The Malpractice Enquiry Committee of the 1st respondent-University considered the explanation of the petitioner and found it not satisfactory and disqualified the petitioner to appear for University examination for a period of three years with effect from March-April, 2000. The 1st respondent University issued proceedings NU/SS-2/MEC/March/April/2000/2001, dated 1-2-2001 disqualifying the petitioner to appear for any University examination for a period of three years with effect from March-April, 2001. The said proceedings are impugned in the writ petition.

4. The 1st respondent University filed counter affidavit/additional counter affidavit. It is stated in the counter affidavit that the examiner who valued the paper Operating System answer book reported that the candidate attached prewritten additional sheets and hence he did not value the paper. On verification it is found that there are altogether eight additional answer books their Nos. are. 1,2,3,5,6,7,8 and 9. The style of writing of answers on the additional sheets No. 5,6,7,8 is different from the answers in other papers. The examiner who valued MCA paper of Artificial Intelligence answer books reported that the candidate is suspected to be attached some pre –written additional sheets and also the matter is not relevant to the questions asked. He also reported that the answers written on these additional sheets were direct copying from the prescribed books 'Artificial Intelligence by Rech.' He did not value the paper. On verification it is found that there are altogether six additional answers books No. 1,2,3,II and III. The style of writing additional sheets No. 1 to 3 is very different from the main answer book and the other three additional answer sheets. The candidate had written number of attached sheets as 8 on the title sheets of the main answer book, whereas the actual number of additional books attached to the main answer book is only six. In nutshell the plea of the 1st respondent University is that the impugned order came to be passed after issuing show cause notice and after considering the explanation submitted by the petitioner. Therefore, there is no violation of the principles of natural justice.

5. Heard the learned counsel for the petitioner and learned standing counsel appearing for the 1st respondent University.

6. The learned counsel appearing for the petitioner submits that the petitioner is a bright student and therefore, there was no need for him to insert pre-written additional sheets in the answer books of two papers namely the Operating System and Artificial Intelligence. He further submits that the petitioner was not given personal hearing and therefore, the impugned order passed by the 1st respondent University is in violation of principles of natural justice. His further submission is that the impugned order is devoid of reasons to buttress his submission, reliance has been placed on the decisions of our High Court in ***V.Ramchander Goud Vs. Controller of the Examination Osmania University*** and the decision of the Allahabad High Court in ***Shaylender Kumar Srivastava Vs. Deputy Registrar Examination University of Allahabad.***

7. Per contra, the learned standing counsel appearing for the 1st respondent University submits that the petitioner never asked for personal hearing and therefore, there is no violation of principles of natural justice in passing the impugned order by the 1st respondent university. He further submits that the impugned order came to be passed after issuing show cause notice and on considering the explanation submitted by the petitioner. His principal submission is that the writ petition is not maintainable since a statutory remedy is available to the petitioner under Section 41 of the Andhra Pradesh Universities Act, 1991. In support of his submissions reliance has been placed on the decision of this Court dated 27-9-2002 in W.P.No.16003 of 2002 (Katta Ramu Vs. the Vice Chancellor, Nagarjuna University, Nagarjuna Nagar, Guntur and two others).

8. During the course of hearing the learned standing counsel appearing for the 1st respondent placed on record the answer sheets of the petitioner relating to the two papers i.e. Operating System and Artificial Intelligence. After going through the answer sheet, I tempted to make certain observations. But, I restrained myself since any observation made in the writ petition may influence the authorities of the University. It is no more in dispute that the 1st respondent University issued impugned proceedings after issuing show cause notice and after considering the explanation submitted by the petitioner. There seem to be no material to show that the petitioner asked for any personal hearing. Be that as it may, the petitioner has statutory remedy under Section 41 of the A.P. Universities Act where under the appeal lies to the Board of Management. For better appreciation, I may refer Section 41 of the A.P. Universities Act and it is thus:

> "*41. Any student or candidate for an examination whose name has been removed from the rolls of the University by the orders or resolution of the Vice-Chancellor, or by a Committee constituted by the Board of Management as the case may be, and who has been debarred from appearing at the examinations of the University for more than one year, may, within ten days of the date of communication of such orders or copy of such resolution to him, appeal to the Board of Management and the Board of Management may confirm, modify or reverse the decision of the Vice-Chancellor or the Committee as the case may be.*"

9. It is explicit from the above referred provision that the petitioner has statutory remedy of appeal to the Board of Management. A similar question came up for consideration in W.P.No.16003 of 2002 (Katta Ramu Vs. the Vice Chancellor, Nagarjuna University, Nagarjuna Nagar, Guntur and two others). Wherein it has been observed as follows:

> *"The learned Standing Counsel for the respondents states that the petitiner was issued a show cause notice and his explanation was taken into account before passing the impugned order. It is also stated that under Section 41 of the A.P. Universities Act (for short' the Act') an appeal is provided against the impugned order to the Executive Council.*
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> *Though the learned counsel for the petitioner raised several contentions touching on facts and law, it needs to be noted that the petitioner was issued a show-cause notice/and an order was passed, which is impugned in this writ petition. Whether the explanation submitted by the petitioner was taken into account, or whether the same was rejected, cannot be adjudicated in this writ petition. Section 41 of the Act, is a provision contemplated to meet such situations empowering the appellate authority to go into the various aspects of the matter.*
>
> *Accordingly, the petitioner is permitted to avail the remedy of appeal provided for under Section 41 of the Act. If the petitioner files such an appeal within ten days from today, the same shall be treated as having been filed within time, and the appellate authority shall pass appropriate orders in accordance with law"."*

10. The facts of the case on hand are similar to the facts of the case in W.P.No.16003 of 2002. Since the statutory remedy is available to the petitioner he cannot invoke extra ordinary jurisdiction under Article 226 of the Constitution of India without availing the said remedy.

11. Accordingly, the writ petition is disposed of giving liberty to the petitioner to avail the remedy of appeal provided under Section 41 of the Andhra Pradesh Universities Act, 1991. If the petitioner files such an appeal within 10 days from today, the same shall be treated as being filed in time and appellate authority shall pass orders in accordance with law. No order as to costs.

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B.Seshasayana Reddy,J

5th August, 2005.

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**THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

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